

FILED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JAN 06 2004

JAMES BONINI, Clerk
CINCINNATI OHIO

DAVID BILLUPS,
PLAINTIFF,

-vs-

JAMES McWEENEY, ET AL.,
DEFENDANTS. /

CASE NO. C-1-01-377
MAGISTRATE JUDGE HOGAN
JUDGE SPIEGEL

MOTION TO DEPOSE DR. DULAN

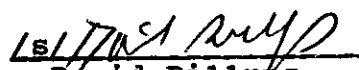
On December 30, 2003 at Doc. 133, this Court fully adopted the "Defendants' Supplementary Motion For Summary Judgment", Doc. 100, filed April 28, 2003, as well as the Affidavit of Defendant McWeeney.

On page 15 and 16 of their Supplementary Motion the Defendants state Dr. Dulan, "without authority and without consulting with his supervisor"(sic), issued Plaintiff's nonsmoking housing order. Defendant McWeeney also states in his Affidavit Dr. Dulan had no authority to issue the order.

Plaintiff moves this court to depose Dr. Dulan to ascertain his duties, his contract, and his authority as it was explained to him before he was hired at Lebanon Correctional. Further, Plaintiff will depose Dr. Dulan to rebut the veracity of Defendant McWeeney's Affidavit, as Dr. Dulan was Plaintiff's treating physician while at Lebanon, and also rebuttal as to his authority and the need to consult with Defendant McWeeney when issuing any orders concerning prisoners' health.

Had this Court not dismissed this case, Dr. Dulan would have been called as a witness at trial to refute the claims of Defendant McWeeney.

Respectfully Submitted,


David Billups
P.O. Box 7010-211903
Chillicothe, Ohio
45601

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CERTIFICATE OF SERVICE

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I hereby certify a copy of the foregoing has been served to Counsel for Defendants at: Marianne Pressman#0059512, 441 Vine Street, 1600 Carew Tower, Cincinnati, Ohio 45202 this 7th day of January 2004 by regular U.S. Mail.

/s/ David Billups
David Billups